

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

Nov 5 9 57 AM '04

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 04-164
Table of Allotments,)	RM-10548
FM Broadcast Stations.)	RM-11048
(Susanville, Quincy, Corning, and Portola,)	
California) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: November 3, 2004

Released: November 5, 2004

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it the *Notice of Proposed Rule Making* and *Order to Show Cause*² issued at the request of Corey J. McCaslin ("Petitioner"). Petitioner filed comments. Keily Miller ("Miller"), licensee of FM Station KHGQ, Channel 262A, Quincy, California and Eastern Sierra Broadcasting ("Eastern Sierra") filed counterproposals.³ Michael R. Birdsill ("Birdsill") filed reply comments.⁴ No other comments or counterproposals were received in this proceeding.

2. **Background.** The *Notice* proposed the allotment of Channel 262A at Susanville, as its fourth FM commercial broadcast service. In order to accommodate Channel 262A at Susanville, we issued an *Order to Show Cause* directed to Keily Miller, licensee of Station KHGQ, Channel 262A, Quincy, California to show cause why Station KHGQ's license should not be modified to specify operation on Channel 265A. The *Notice* also proposed the downgrade of FM Station KTHU, Channel 264C1, Corning, California to Channel 264B. Miller filed a timely counterproposal proposing the reallocation of Channel 262A from Quincy to Durham, California, as its first local service and modification of the Station KHGQ license accordingly. Eastern Sierra filed a timely counterproposal requesting the allotment of Channel 264A at Portola, California, as its first local service.

3. Birdsill filed reply comments opposing Miller's counterproposal and expressing an interest in the proposed Susanville allotment. In addition, Birdsill asserts that it is not permissible to advance a change of community of license for an FM Station in a counterproposal where a *Notice* has proposed an involuntary channel substitution for the licensed community. Birdsill contends that Miller was effectively "cut-off" from seeking change in the community of license for Station KTHU once the *Notice* was adopted. Birdsill also states that Miller's counterproposal is defective because the proposed reallocation would not provide a 70 dBu signal to one hundred percent of Durham as required by Section 73.315(a) of the Commission's rules.⁵ To resolve the conflict between Channel 264A at Portola and Channel 265A at

¹ Portola, California has been added to the caption. See *Public Notice*, Report No. 2668 released August 5, 2004.

² *Susanville, Quincy, and Corning, California*, 19 FCC Rcd 7952 (MB 2004). ("Notice")

³ Miller filed a Motion for Leave to File Supplement and Supplement to Counterproposal.

⁴ Birdsill also filed an Opposition to Motion for Leave to File Supplement and Reply to Supplement to Counterproposal.

⁵ 47 C.F.R. § 73.315(a).

Quincy, Birdsill proposes the substitution of alternate Channel 232A for Channel 262A at Quincy instead of the proposed Channel 265A for Station KHGQ.

4. **Discussion.** The Miller counterproposal proposing the reallocation of Channel 262A to Durham was timely filed and conflicts with the proposed Channel 262A allotment at Susanville. As such, it would have been considered as a counterproposal in this proceeding. However, the Miller counterproposal is technically defective. The proposed transmitter site is 23.3 kilometers from Durham. At maximum facilities, the 70 dBu contour of a Class A FM station will extend only 16.2 kilometers. Therefore, we are denying the counterproposal because it does not comply with Section 73.315(a) of the Commission's rules.

5. Eastern Sierra timely filed a counterproposal requesting the allotment of Channel 264A at Portola in lieu of Channel 262A at Susanville. The proposed Portola allotment is mutually exclusive with the proposed Channel 265A substitution at Quincy for Station KHGQ. Generally, mutually exclusive proposals are examined under the policy set forth in *Revision of FM Assignment Policies and Procedures*.⁶ In this instance, a comparison is not necessary because alternate Channel 269A is available at Portola. As such, we are allotting Channel 269A to Portola, as its first local service. Channel 269A can be allotted to Portola in compliance with the Commission's rules provided there is a site restriction of 3.0 kilometers (1.8 miles) north of Portola.⁷

6. Because there is no longer an impediment to the original proposal for a Channel 262A allotment at Susanville, we are allotting Channel 262A at Susanville, California, as its fourth FM broadcast service. Channel 262A can be allotted to Susanville, consistent with the minimum distance separation requirements of the Commission's rules using the city reference coordinates.⁸ To accommodate the Susanville allotment, we are substituting Channel 265A for Channel 262A at Quincy and modifying the license of Station KHGQ to reflect this change. Channel 265A can be allotted at the current licensed site of Station KHGQ, Quincy, California.⁹ Although, the Petitioner has pledged to reimburse Miller, we note that the ultimate permittee of the Susanville allotment is required to reimburse Miller for reasonable cost and expenses associated with changing its frequency for Station KHGQ to accommodate Channel 262A at Susanville.¹⁰ Additionally, to facilitate the Channel 265A substitution at Quincy, the *Notice* proposed the downgrade of Station KTHU from Channel 264C1 to Channel 264B at Corning, California because the station is currently licensed on Channel 264B with an expired construction permit for Channel 264C1. This downgrade is no longer necessary because the FM Table of Allotments was changed to reflect the licensed Channel 264B for Station KTHU at Corning.¹¹

7. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

8. Accordingly, pursuant to the authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS ORDERED, That effective

⁶ 90 FCC 2d 88, 91 (1988). The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)].

⁷ The reference coordinates for Channel 269A at Portola are 39-49-59 NL and 120-28-54 WL.

⁸ The reference coordinates for Channel 262A at Susanville are 40-24-59 NL and 120-39-07 WL.

⁹ The coordinates for Channel 265A at Quincy are 39-56-15 NL and 120-56-49 WL.

¹⁰ *See Circleville, Ohio*, 8 FCC Rcd 2d 159 (1967).

¹¹ *See Various Locations*, 18 FCC Rcd 19203 (MB 2003).

December 20, 2004, the FM Table of Allotments, 47 C.F.R. Section 73.202(b), IS AMENDED, with respect to the communities listed below, to read as follows:

<u>Communities</u>	<u>Channel No.</u>
Quincy, California	240A, 265A
Portola, California	269A
Susanville, California	222C2, 227C, 242C3, 262A

9. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 316(a), that the authorization of Keily Miller for Station KHGQ, Channel 262A, Quincy, California, IS MODIFIED to specify operation on Channel 265A at Quincy, California, subject to the following conditions:

- (a) Within 90 days of the effective date of the *Order*, the licensee of Station KEKO(FM) shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with 47 C.F. R. Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to C.F.R. Section 1.1307, unless the proposed facilities are categorically excluded from environmental processing.

10. The window period for filing applications for Channel 269A at Portola, California and Channel 262A at Susanville, California will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent order.

11. IT IS FURTHER ORDERED, That the aforementioned proceeding IS TERMINATED

12. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau